

**Decision Record for the Control of
Curly Top Virus on Public Lands in California
2002-2006**

A. Decision

The decision is to approve the project as proposed in the Environmental Assessment (EA) for the Curly Top Virus Control Program, 2002-2006, with the additional measures listed below. These additional measures are based on terms and conditions in the biological opinion issued by the Fish and Wildlife Service (FWS) on the proposed action. The FWS terms and conditions also apply to the pesticide use permit (PUP) being issued to the California Department of Food and Agriculture (CDFA). The PUP is the BLM instrument for authorizing the project on BLM administered lands. The PUP will be issued in April 2002 for a five year period.

In addition to the measures proposed in the EA, the following terms and conditions will apply:

1. An employee education program shall be conducted by a FWS-approved biologist to acquaint employees (ground crews, flaggers, and supervisors) as to the identification, avoidance, biology, and conservation of the listed species they may encounter.
2. An approved biologist shall be present during spray operations conducted within threatened and endangered species habitats.
3. An annual report shall be provided to FWS on treatments conducted during the previous year.
4. A replicated, controlled insect biomass study shall be performed to assess the effects of spring aerial malathion spraying on the quantity of insects likely to be available to blunt-nosed leopard lizards.
5. Quantitative measurements of the amount of malathion deposited downwind of spray areas shall be made at several distances from the edge of the sprayed area.
6. Quantitative measurements of malathion concentrations shall be made of any surface waters in the immediate vicinity of the sprayed area before, immediately after, and 3-5 days after aerial and ground-rig spray events.
7. No treatments shall be applied to riparian habitats used for migration by least Bell's vireos or southwestern willow flycatchers. Buffers of at least 200 meters shall be maintained around such habitats during the applicable migration periods.
8. No treatments shall be applied to mountain plover wintering areas (alkali sink scrub, fallow fields, and annual grasslands) when plovers are present. A minimum buffer of 50 meters shall be left untreated adjacent to occupied rangeland habitats and agricultural fields that are occupied by mountain plovers.

9. No treatments shall be applied in designated flat-tailed horned lizard management areas, as set forth in the Flat-tailed Horned Lizard Rangewide Management Strategy (Twedt 2001). Treatments within other flat-tailed horned lizard habitats shall be limited to not more than one application in a given area per year.
10. Harvester ant monitoring shall be conducted in association with any treatments that occur in flat-tailed horned lizard habitat in the Imperial Valley.
11. Treatments in desert tortoise habitat shall be conducted in accordance with the following conditions: (a) spraying in desert tortoise habitat shall be restricted to the winter months to the maximum extent practicable; (b) vehicles shall not exceed 15 miles per hour while conducting surveys or treatment activities; (c) any desert tortoises encountered during survey or treatment activities shall be avoided to the maximum extent practicable; and (d) trash shall be removed daily from desert tortoise habitat to avoid attracting ravens or other predators.
12. Prior to the aerial application of malathion in the vicinity of habitats occupied by listed vernal pool crustaceans, the vernal pools on BLM lands in the Salinas and Cuyama Valleys shall be identified and digitally mapped. Surveys shall be conducted for vernal pool crustaceans in at least 50 per cent of the identified vernal pools.

B. Background

The CDFA has applied to BLM for renewal of authorization to control the beet leafhopper *Circulifer tenellus* (BLH) on BLM administered lands in California using the insecticide "malathion". The BLH is a known vector for spreading the plant disease "curly top virus" which causes damage to many important agriculture crops and gardens. Prior to the present permit application, CDFA has received authorizations from BLM to conduct such treatments since 1986 at five year intervals. The current authorization expires on April 11, 2002.

CDFA has requested authorization to apply malathion on BLM administered rangelands in a prescribed manner. Much of the BLM land subject to potential treatment is intermingled with a larger proportion of privately owned lands. The majority of the potential treatment areas administered by BLM are within the San Joaquin and Imperial Valleys. The San Joaquin area is treated most frequently, usually on an annual basis depending on BLH population conditions. The other BLM lands in the project area are treated infrequently; some areas have never been treated. In any given year, CDFA may treat between 965 and 10,000 acres of BLM land. The average treatment during the period 1992-2001 has been 3,739 acres. When treatments are needed, they are applied at critical times during the fall, winter, and spring months for optimum control of BLH. A single treatment for any given area is generally sufficient to control BLH populations in the San Joaquin Valley. For the Imperial Valley, a single treatment applied in the winter or spring is sufficient.

CDFA prepared an EA for the proposed treatment program for consideration by BLM and the Department of Energy (DOE). DOE also manages Federal lands within the project area in Kern County. Public scoping was conducted. Notices were published in six newspapers with general circulation in the project area. In addition, interested parties were mailed a "Notice of Determination to prepare an Environmental Assessment" requesting comments for the project. The comment period ended on June 30, 2001. Comments received on the proposal were considered in developing the EA and in this decision.

Much of the potential treatment area is within the range of plant and animal species listed as threatened or endangered under the Endangered Species Act (ESA). Consultation, pursuant to Section 7 of the ESA, was completed with FWS during the review process. The FWS issued a "no jeopardy" biological opinion on the proposed action on November 21, 2001. The results of this consultation were relied upon heavily in our determination to approve the CDFA proposal. Terms and conditions prescribed in the biological opinion to minimize incidental take of listed animal species have been incorporated as permit stipulations. These terms and conditions are paraphrased as measures 1 through 12 in Section A above.

C. Rationale for the Decision

The proposed project is an ongoing program between BLM and CDFA and is crucial to protecting agricultural crops in the state from the effects of curly top virus (CTV). CDFA's past control efforts on selected BLM lands have resulted in effective population control of the vector that transmits CTV. The virus affects sugar beets, tomatoes, melons, peppers, beans, cucumbers, squash, pumpkins, spinach, vine seed and other commercially important crops, including ornamentals. CTV not only infects commercial crops, but at times devastates backyard vegetable and flower gardens. The BLH often spends a part of its life cycle on rangelands near or adjacent to agricultural fields. Rangelands, some of which are administered by the BLM, produce annual vegetation during periods of rapid plant growth which serve as desirable host plants for the BLH. The implementation of the proposed project, as modified by the above terms and conditions, is compatible with other uses and resource values on BLM lands.

D. Alternatives Considered

Alternatives to the proposed action identified and analyzed in the EA include a reduced project alternative in which no treatments would occur on public lands and a no action alternative in which the project would not use pesticides anywhere for controlling BLH. Five other alternatives were considered, but not analyzed in the EA, including the following: (1) the use of an alternative pesticide was dropped because malathion is considered one of the safest pesticides and no other pesticide is registered for use in California for control of BLH in rangeland; (2) eradication of all BLH host plant species in rangeland areas was not analyzed in detail because BLH uses many species of host plants as food sources or ovipositing sites; (3) eradication of a single plant species used by BLH almost exclusively during specific times of the year due to past attempts and high costs of implementation; (4) exclusive use of biological control and was not analyzed because biological control efforts have not been developed sufficiently to consider full-scale

development; and (5) controlling BLH using a combination of minimal aircraft and mostly ground spray-rigs, or using ground spray-rigs only, was dropped from further analysis because much of the area to be treated is rough terrain and inaccessible by ground spray-rigs. Details concerning the reasons the above five alternatives were not analyzed further can be found on pages 35 through 37 of the EA.

E. Public Concerns and Comments

Three comments were received as a result of public scoping. One comment from the University of California at Riverside requested that the EA contain a comprehensive assessment of the impact of the program on state and federally listed reptile species and species of special concern. An analysis of the effects of the program on all potentially affected listed species (including reptiles) and on selected other reptile species was included in the EA and as part of the FWS biological opinion. Additional measures 4, 9, 10, and 11 in Section A above relate specifically to assessing or minimizing potential impacts on reptiles. A comment received from the Sierra Club California/Nevada Desert Committee raised concerns about the impacts to the flat-tailed horned lizard. These concerns were analyzed and addressed in the EA and in the biological opinion. The third comment was in support of the proposed action.

F. Conformance with Land Use Plans

The BLM administered land is within the project areas governed by the following land use plans: The California Desert Conservation Area Plan, 1980 (as amended); the South Coast Resource Management Plan, 1994; Hollister Resource Management Plan, 1994; and Caliente Resource Management Plan, 1997. The proposed project as modified by the terms and conditions is in conformance with these plans and BLM policy.

G. Endangered Species Act Consultation

Pursuant to Section 7 of the ESA, BLM requested formal consultation on the renewal of CDFA's pesticide use permit for curly top virus control on September 22, 1990. The FWS issued its biological opinion (FWS #1-1-00-F-0212) on November 21, 2001. This "no jeopardy" opinion addressed 23 listed and proposed listed species distributed among Imperial, Fresno, Kings, Kern, Los Angeles, Merced, Monterey, San Luis Obispo, Santa Barbara, Stanislaus, and Ventura Counties. The terms and conditions in this biological opinion are paraphrased as measures 1 through 12 in Section A above and have been incorporated as permit stipulations. A more detailed description of these terms and conditions is presented on pages 80-83 of the biological opinion.

H. Finding of No Significant Impacts

Based on the analysis of potential environmental impacts contained in the 2002 EA for the Curly Top Virus Control Program, I have determined that impacts on the human environment are not expected to be significant and an Environmental Impact Statement is not required.

I. Administrative Appeal Process

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 Code of Federal Regulations, Part 4. A notice of appeal must be filed with State Director Mike Pool, California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, CA 95825 within 30 days. A copy of the appeal must also be filed with the Office of Regional Solicitor, US Department of Interior, 2800 Cottage Way, Sacramento, CA 95825.



The appeal shall state the reasons, clearly and concisely, why you think the final decision is in error. All reasons for error not stated in the appeal shall be considered as waived and may not be presented at the hearing. Any failure to meet this thirty (30) day appeal deadline will bar you from challenging this decision. If you wish to petition for stay you must include the stay petition with your appeal. You have the burden of proof to demonstrate why a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied;
- (2) the likelihood of the appellant's success on the merits;
- (3) the likelihood of immediate and irreparable harm if the stay is not granted; and
- (4) whether the public interest favors granting the stay.

Approval


State Director, California
Date